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Before The

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket 98-147
Advanced Telecommunications Capability	)	

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

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SUMMARY

The Commission seeks comments on a proposed alternative for the offering of advanced telecommunications services through a separate affiliate, free of ILEC regulations. The Commission also is seeking comments on various proposed rule changes and broadened application of § 251 to address advanced services. As a mid-size incumbent local exchange company, Cincinnati Bell Telephone Company believes that the Commission should not require separate affiliates in order for ILECs to provide advanced services free of § 251(c) obligations. The most efficient means to promote the deployment of advanced services is to eliminate as much regulation of such services as possible.

The Telecommunications Act of 1996 has created a competitive environment in the local telecommunications industry which has provided new entrants the opportunity to reach every customer using the facilities of incumbent carriers. This opportunity has been possible because of the incumbents' fundamental responsibility to ensure everyone has access to affordable telephone service. For new, advanced telecommunications capabilities, this foundation for a competitive marketplace should be sufficient and ILECs should be free to compete on the same basis as CLECs. All competitors have the same opportunity to deploy advanced data services using the existing building blocks. New entrants do not need to be given access to new advanced services equipment deployed by incumbents as all participants are now able to introduce such new services and equipment themselves.

The marketplace will determine who succeeds based on meeting customer expectations and demands, prices, value, and service. For this to occur, however, market forces must be allowed to work free of artificial influences. Constant and continual

regulation is neither necessary nor warranted. Regulation of advanced telecommunications capabilities will slow deployment and place an extraordinary financial burden on small and mid-size companies who want to make available new technologies to their customers. The Commission ought to take a hands-off approach and allow the market to succeed on its own. The Commission needs to offer forbearance, especially to small and mid-size companies, if it truly wants all Americans to have access to new advanced telecommunications services.

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COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Cincinnati Bell Telephone ("CBT"), an independent, mid-size local exchange carrier, submits these Comments in response to the Federal Communications Commission's ("Commission") August 7, 1998, Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.

INTRODUCTION

In this proceeding, the Commission is seeking comments on proposed new regulations regarding the provision of advanced telecommunications capabilities and services. Cincinnati Bell Telephone agrees that the Commission should ensure that the telecommunications marketplace is conducive to investment, innovation, and meeting the needs of consumers. The Commission's objective and directive under the 1996 Act should be to promote innovation and investment by all participants in the telecommunications marketplace, not just CLECs. However, CBT believes that additional regulation by the Commission would be counterproductive to the goal of promoting investment in and deployment of advanced telecommunications capabilities.

Competitive firms are motivated to promote innovation when their own economic interests warrant such action. In order to justify investment in new technologies, the competitive firms must be able to project that they will earn a return on their investment. Attaching ILEC obligations to advanced telecommunications services dramatically reduces the incentive to invest in advanced telecommunications capabilities because incumbents are disadvantaged; that is, they would receive no benefit through innovation or differentiation since the ILEC would be required to share such economic gains with all competitors. While the option of creating a separate affiliate may be a noble effort to free ILECs of regulation so that they will invest in advanced telecommunications capabilities, the restrictions in the Commission's proposed rules make such separate affiliates onerous and uneconomical for small and mid-sized LECs.

In its zeal to insure a competitive environment for new and advanced services, the Commission must not go beyond what is required to create market opportunities. The existing competitive rules already assure that all competitors have an opportunity to obtain access to all ILEC customers, with no one competitor being able to exclude any other from a particular market. Through unbundling of the existing telephone networks, a CLEC can provide facilities-based service to any individual customer. The same approach is not necessary with respect to advanced telecommunications capabilities. Such services are generally provided by adding new technology to the existing public switched telephone network, and all competitors have the same ability to implement such added new technology. To the extent advanced services are provided by investing in new types of infrastructure, the new entrant carriers ("NECs") and others also have the same opportunity to invest in and construct this new infrastructure. Where incumbents have no

ability to restrict NECs from reaching these new markets, they must not be burdened by rules and regulations that create barriers to the deployment of new and advanced telecommunications capabilities.

The influence and control of free market forces must not be ignored, but rather should be relied upon as the most efficient means of facilitating the deployment of new technology. Where there is a real demand for a service the marketplace, not regulation, will send the correct economic signals to competitors whether or not an investment in that market is likely to generate a return. In the new world of telecommunications competition, where most of the new players are global financial giants, the Commission should, in particular, consider the heavy burdens any new regulations will have on small and mid-size companies who want to invest in and offer new advanced telecommunications capabilities and compete on the same basis in the same environment. The use of regulation to attempt to incent certain behavior invariably causes market distortions and results in resources being invested in a manner which ignores the true demands of the marketplace. Subsequently, any change to that scheme of artificial regulation will cause disruption to market expectations. Therefore, the Commission ought to minimize regulation of advanced telecommunications services. The creation of separate affiliates, special loop requirements, and application of § 251's unbundling and resale regulations are not warranted. The Commission should gear its efforts towards regulatory relief, thereby encouraging normal market forces to shape the development of advanced telecommunications capabilities.

I. SEPARATE AFFILIATES SHOULD NOT BE REQUIRED TO AVOID ILEC OBLIGATIONS

The Commission has proposed in Section VI.B, paragraphs 85 through 117, that ILECs be required to form separate affiliates in order to provision advanced services free from incumbent LEC regulation.[1] CBT supports the promotion of advanced services and regulatory freedom for such services, but disagrees that the creation of a totally separate affiliate is necessary to equalize the ability of competitors to participate in advanced service provisioning. To the contrary, the requirement of a separate affiliate would result in an inefficient use of resources, would promote economic inefficiency and would create barriers to ILEC provisioning of advanced telecommunications capabilities. Furthermore, the Commission's concept of a separate subsidiary providing advanced telecommunications capabilities in the same service area as the ILEC may be prohibited by Ohio's existing local competition guidelines. For these reasons, CBT does not support the need for a separate affiliate to avoid ILEC unbundling and resale obligations.

Inefficient Use of Existing Resources. All providers of advanced services have available to them the basic building blocks that would be used to provision advanced services. The incumbent provider of telephony has no distinct advantage in this new emerging data service market that would justify the imposition of ILEC duties. To the extent advanced telecommunications capabilities were not present in ILEC networks at the time of passage of the 1996 Act, the ILEC would need to deploy new equipment to provide advanced services. Now that they have access to UNEs existing in ILEC

[1] CBT agrees with the Commission's conclusion that a separate affiliate would not be an ILEC within the meaning of the statute and, hence, would not have ILEC duties under § 251(c). However, as stated in these comments, CBT believes that the Commission

networks, CLECs have the same opportunity to deploy these new technologies as the ILECs.

While Congress appears to have anticipated that the 1996 Act would create competition in all segments of the telecommunications business, it is abundantly clear now that CLECs have targeted the more lucrative business customers and are not choosing to serve residential customers whose existing basic rates tend to be below the cost of providing service due to universal service concerns. ILECs have not had the same ability to select their customer bases and have been required and continue to serve as the carrier of last resort for all customers. Erosion of their business customer base will leave ILECs with more and more of the residential market, reducing their overall operating income. Advanced services provide a means for the incumbent to begin to recover its full cost of provisioning service to all customers by recovering incremental margins through the pricing of discretionary services. Creating a separate affiliate would defeat this objective and would only serve to exacerbate the problem for the incumbents.

Attachment A is a hypothetical example of the current residential subsidy problem faced by ILECs compared with the opportunities available to CLECs. Today, as a general matter, basic local residential service is provided below economic cost by the incumbent as a result of public policy concerns. As indicated in the example, basic service without vertical services, such as caller ID, has a negative effect upon operating margin to the incumbent. Where customers utilize vertical services, the incumbent has an opportunity to realize a positive operating margin. It is this same sophisticated customer,

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should go even further and determine that ILECs can provide new services directly without being subject to the requirements to unbundle and resell.

who currently subscribes to certain vertical services, who is also most likely to subscribe to advanced services and would provide the incumbent with an opportunity to increase its operating margin with residential customers. If a separate affiliate must be created to take full advantage of advanced services, then the higher margin customers would tend to leave the incumbent and take service from the affiliate since the affiliate is the provider offering the desired service. The incumbent would then be left with an even higher proportion of customers who provide a negative operating margin and would have no other recourse than to increase rates in order to protect its financial health.

Attachment A also demonstrates that competitors are not disadvantaged through either a resale or facilities-based unbundled alternative under today's regulations. As would be expected, resale leaves the new entrant with a positive operating margin regardless of the actual cost of providing service because the new entrant is simply reselling the incumbent's service less the avoided cost. The unbundled alternative also provides an opportunity for the new entrant to realize a positive operating margin with customers who subscribe to vertical services and advanced services. The creation of a separate affiliate would increase the ILEC's cost, prohibit the use of labor and capital deployment synergies of the incumbent and ultimately increase the cost to the customer.

Promotes Economic Inefficiency. The Commission's proposal to require completely separate affiliates in order to avoid § 251 requirements does not result in an efficient use of resources. Paragraph 96 proposes seven requirements that such an affiliate would have to meet in order to avoid being treated as an ILEC. These requirements would increase the cost of ILECs to provide data services to the customer, costs that are not required of CLECs, such that the incumbent would not be able to price

the service competitively and the increased cost will limit the demand for the price elastic customer.

Attachment B is a hypothetical example indicating the cost of provisioning data service by an affiliate. It does not make any specific assumptions about the seven requirements but limits the cost to simply making advanced services available. The seven requirements would significantly increase cost beyond the assumption in Attachment B. Based on a recent study by Forrester Research, Inc., 16 million households will use broadband connections. Based on this level of demand, an assumed cost of provisioning broadband service of $150 and a labor requirement of one full time equivalent for every ten thousand annual installations, the cost to affiliates will be in excess of $3 billion. This cost translates into more than $17 per month per customer. With such substantial capital requirements in order to launch advanced services, the separate affiliate requirements raise serious concerns over the ability of separate affiliates to raise the billions in necessary capital, given the absence of cash flow and the prohibition on lenders having any recourse to the incumbent as outlined in paragraph 96 of the Commission's proposal. Clearly, the creation of an affiliate does not create any additional value for the customer and will stifle demand.

Disadvantages small, mid-side incumbent. In paragraph 98, the Commission seeks comment "on whether the same separation requirements should apply to all advanced services affiliates for them to be deemed not incumbent LECs, regardless of the size of the associated incumbent LECs." The answer is a resounding "No!" Clearly Congress recognized a size differential between ILECs and allowed states to provide

different treatment for smaller companies. 47 U.S.C. § 251(f). The Commission should do the same. One size clearly does not fit all.

Small and mid-size LECs already operate at a disadvantage in terms of size and scope. Not only are the RBOCs and GTE 20-40 times the size of CBT and other mid-size companies but competitors for advanced telecommunications services will be companies like MCI World Com, AT&T and Time Warner, who are global competitors that dwarf companies like CBT in size and financial resources. The Commission must recognize the tremendous burden operating through a separate affiliate would place on small and mid-size LECs who want to offer advanced telecommunications services to their customers. Establishing a new and completely separate subsidiary would be extremely expensive and defeats whatever small economy of scale or efficiency the smaller companies may have as a result of centralized operations. Separate affiliates require duplication of systems, training, personnel, etc. The planning, implementation and start up phases for a new subsidiary can take many months, not including state certification, which might be required. As indicated above, capitalization and financing costs alone may be prohibitive. The proposed separate affiliate rule does not allow for any sharing of resources. Requiring a separate subsidiary would penalize small and mid-size companies.

CBT explains in these comments why the Commission should not require separate affiliates for advanced services to not be subject to ILEC § 251 obligations. While CBT clearly opposes a separate subsidiary requirement, in the event the Commission goes forward with such a regulatory scheme, pursuant to the invitation in

paragraph 97, CBT believes the Commission should at least relax the degree of separation that the proposed rules would require:

1. The first proposed criteria would require completely independent operations. There is no legitimate reason why affiliates should not be allowed to contract with ILECs for the provision of operating, installation or maintenance functions to the affiliate. When CLECs purchase UNEs from ILECs they are essentially using the ILECs to perform these functions. So long as affiliates pay the same component costs as are used to develop rates for CLECs, they should be allowed to contract with the ILEC. To require the separate affiliate to provide these functions independently is unnecessarily duplicative and would disadvantage the affiliate in the market.

2. The second proposed criteria would require all affiliate transactions to be publicly disclosed. The current affiliate transaction rules do not require such specific and public disclosures. It should be sufficient that the companies maintain appropriate records available to inspection by the appropriate regulatory agency.

3. The fourth criteria would require completely separate officers, directors and employees. This is another unfair handicap placed on the ILEC that is not faced by CLECs, who are allowed to provide all types of services through a single company, with no distinction being made between voice, data, and other services. To require ILECs and their separate affiliates to maintain strict separation of all personnel and management requires unnecessary duplication of functions that competitors are not required to do.

4. The fifth criteria requires that creditors have no recourse against the ILEC. This unfairly inhibits the ability of the separate affiliate to raise capital. CLECs have no

restrictions on how they can secure their debt. To place such a restriction on ILEC affiliates raises the cost of capital to such affiliates, creating a competitive disadvantage.

5. The sixth criteria would prohibit all discrimination in favor of its affiliate. Footnote 191 indicates that this is based upon the provisions of § 272, which Congress indicated should only apply to RBOC affiliates when they engage in manufacturing or the provision of interLATA service. Both of these are carryovers from the AT&T consent decree. There is no basis to impose these strict separate affiliate requirements on non-RBOC companies for any purpose. This rule would, for example, prohibit the ILEC from sharing any marketing information with its affiliate and require the two companies to duplicate those functions or else share the same information with all competitors. No CLEC is under such a duty.

CBT agrees with the Commission's conclusion in paragraph 100 that an advanced services affiliate, to the extent it provides interstate exchange access service, should be presumed to be non-dominant. However, CBT does not believe the Commission's conclusion goes far enough. CBT believes that the Commission should also allow ILECs to provide advanced services without forming a separate subsidiary and still be considered non-dominant. Since advanced services would be new to an ILEC, as they would be to a CLEC, the Commission should begin with the assumption that the advanced services market is fully competitive and, only upon clear evidence to the contrary, should direct provisioning of advanced services by an ILEC be subject to federal price regulation and tariffing.

In paragraph 101, the Commission seeks comment on whether an advanced services affiliate should be limited in its ability to resell ILEC services or to purchase

UNEs. There is no apparent basis for any such restrictions. CLECs have the capability of doing business in this manner and, to have balanced competition, the ILEC affiliate should have the same rights. Otherwise, the market would be skewed in favor of the CLEC and against the ILEC affiliate. Further, CBT sees no unfair advantage to ILEC affiliates using virtual collocation. Virtual collocation is available to CLECs as well, so again, the parties would be on an equal competitive footing.

In response to paragraph 102, CBT does not believe that the Commission should prohibit advanced services affiliates from favoring ILEC information services providers. The market will dictate the level of access to alternative information service providers that will be necessary in order to sell advanced services. If ILEC affiliates restrict to whom customers can connect, they risk limiting the size of their market share. Those advanced services providers who provide the widest access to information service providers will be the most attractive to end users. If ILECs limit service provider availability, CLECs could offer a wider choice and gain a market advantage. This is just one example of where the Commission should refrain from regulating and allow the laws of supply and demand to work. Clearly, the provider with the most attractive product for the customer will prevail.

In response to paragraph 103, CBT does not believe there should be anticompetitive concerns with respect to ILECs offering services on an integrated basis. The whole basis upon which the Commission's separate affiliate rules are premised is that ILECs would have to comply with unbundling and resale obligations absent a separate affiliate. CBT disagrees with this basic premise. The statutory definition of an ILEC refers to a carrier that provided "telephone exchange service" in a given area on the

date of enactment of the 1996 Act. Advanced services are not "telephone exchange service" nor were they being provided on the date of enactment of the 1996 Act. The Commission could clearly construe the definition of an ILEC to be limited to its capacity in providing "telephone exchange service" and not apply to the subsequent provision of advanced services.

Further, the Commission has the power under § 251(d)(2) to determine what network elements need to be unbundled. One of the criteria is whether the failure to provide access to a given network element would impair the ability of competitors to provide service. As has been noted herein, CLECs have the ability to provide advanced services without unbundling of newly installed equipment used to provide advanced services because the CLEC has the same ability to deploy the additional equipment necessary to use the existing telephone network for provision of advanced services.

Similarly, there is no need for resale of advanced services. This fundamental fact is not changed by whether the ILEC provisions such services directly or does so through a separate advanced services affiliate. The Commission appears to acknowledge that CLECs are not competitively disadvantaged by separate advanced services affiliates being exempt from requirements to unbundle or resell. Therefore, the Commission should also agree that the CLECs are not disadvantaged by the ILEC deploying advanced services directly, so long as the CLEC has a similar opportunity to provide those services. The degree of separateness of the ILEC affiliate has no bearing upon whether the CLEC has that ability. The Commission ought to allow ILECs to provide advanced services without being subject to ILEC obligations and without having to form separate subsidiaries.

II. TRANSACTIONS BETWEEN ILECS AND AFFILIATES

In paragraphs 104 et seq., the Commission indicates its intention to treat affiliates as ILECs when they engage in certain types of transactions. As a general rule, transactions between ILECs and their advanced services affiliates should not be treated as "assignments." The Commission is apparently interpreting the language of § 251(h)(1)(iii) to mean that transfers of property to affiliates render the affiliate an "assign" and, hence, they would become ILECs for regulatory purposes. This interpretation is far too broad and is not consistent with the purpose of the definition.

Section 251(h) defines ILEC to mean the local exchange carrier that provided telephone exchange service in a given area or the entity that afterwards became a successor or assign of the ILEC. The apparent purpose of this provision was to account for sales, mergers and consolidations where the identity of the carrier that provided telephone exchange service on the date of enactment of the 1996 Act in a given area might change. However, there is no indication that transactions with an ILEC that continues in the business of providing telephone exchange access in the area would render the other company an ILEC as well. So long as the ILEC continues to provide telephone exchange access in the area as it did on the date of enactment, it should continue to be the only service provider that is deemed an ILEC. Mere transfers of property, personnel, or other assets to an affiliate should not make that affiliate an ILEC when the ILEC continues providing telephone exchange service. This is particularly the case where the new affiliate is providing advanced services, not telephone exchange service.

With respect to paragraph 105, CBT agrees that an affiliate should not be deemed an assign of the ILEC when it acquires facilities on its own. However, the Commission should go even farther. An affiliated entity should not be deemed an assign of the ILEC, for purposes of the ILEC definition, if the property assigned neither existed nor was used to provide telephone exchange services, on the date of enactment of the Act. The theory of treating an assign as an ILEC is that the facilities used to provide telephone exchange service on the date of enactment of the Act should continue to bear ILEC obligations. However, where facilities were not in place at that time, they should be exempt from those obligations, especially when those facilities are not used to provide telephone exchange service.

CBT disagrees with the Commission's conclusion in paragraph 106 that transfers of existing ILEC DSLAMs, packet switches, and related facilities used to provide advanced services to ILEC affiliates render those affiliates assigns of ILECs. A distinction should be made between equipment that existed at the time of enactment of the 1996 Act and which was used to provide telephone exchange service and equipment that was purchased and/or installed at a later date or which is not used to provide telephone exchange service. The Commission's proposed rule would defeat the purpose of creating a new affiliate to avoid ILEC obligations. ILECs would be left with investments in DSLAMs, packet switches and other equipment, which could not be used by either the ILEC or its affiliate without being subject to § 251. This is contrary to the Commission's charge in § 706 of the Act to facilitate the deployment of advanced telecommunications capabilities. The Commission should instead give ILECs every incentive to deploy all of their existing equipment, which should include exempting

transfers to affiliates from assignment rules and allowing ILECs to deploy such equipment directly without unbundling or resale obligations.

In response to paragraph 108, CBT believes that there should not only be a *de minimis* exception to transfers of equipment, but that all transfers of advanced services equipment be exempted from ILEC regulation. Particularly to the extent that an ILEC invested in such equipment without knowing that the Commission would consider it to be subject to unbundling and resale obligations, it would be unfair to prohibit the transfer of that equipment to the separate affiliate without being encumbered by the same regulatory obligations. ILECs should be allowed to transfer both equipment that has been ordered and equipment that has been installed.

In response to paragraph 109, CBT opposes a time limit on such transfers. ILECs need to have sufficient time to develop business plans to determine whether and how they would set up separate affiliates. In addition, there may be state regulatory hurdles to cross, which might not be accomplished within a six-month deadline. Further, there is no reason to distinguish between equipment acquired before this NPRM, as opposed to the effective date of any rules adopted in this proceeding, because no one can know what the final rules will be at this time. Any equipment acquired prior to the effective date of any final rules should be freely transferable to an affiliate without ILEC obligations attaching to the affiliate.

CBT agrees that transfers to affiliates should be exempt from non-discrimination requirements, as proposed in paragraph 111. There should not be a specific time limit on such transfers, so long as the equipment transferred was ordered or installed prior to the effective date of the rules established in this proceeding.

CBT also believes that equipment used by ILECs for trial purposes should be freely transferable to affiliates (paragraph 112). Equipment that has only been subject to a trial has generally not been used in provision of telephone exchange service and would not have been unbundled to competitors. As the ILEC did not use this for "ILEC purposes" it should not carry ILEC obligations with it when transferred to an affiliate. Furthermore, the Commission's separate affiliate rules limit the practical ability of the affiliate to engage in equipment trials due to limited scale and scope. The affiliate should be allowed to use the ILEC for testing purposes so that the affiliate does not have to duplicate technical capabilities that may already be present at the ILEC. This would not give the affiliate an unfair advantage because CLECs have no rules requiring them to separately manage their telephone exchange services and advanced services and can test equipment more efficiently than ILEC affiliates.

In response to paragraph 113, CBT reiterates that it believes the proposed separate subsidiary requirements are far too strict. Thus, CBT believes that ILECs ought to be able to perform the same functions internally that a separate subsidiary would perform without having the ILEC obligations attach to the provision of advanced services. In any event, if the Commission does go forward with its separate subsidiary rules, any kind of transfer to the affiliate should be permitted so long as the ILEC retains the business of providing telephone exchange service, which, by definition, is what makes it the ILEC. Certainly the transfer of employees should be allowed as the rules would require separate employees and the most likely source of hiring for the affiliate would be personnel that are already known and who have the technical and managerial abilities to operate the business. Similarly, brand names should be transferable. CLECs are allowed to provide

local, long distance, Internet, advanced services and any other kind of service they wish under the same brand name. ILECs should have the same ability. The ILEC affiliate should be permitted to use the same brand names as the ILEC itself uses. Transfers of funds from the ILEC's corporate parent should be freely permitted without any ILEC obligations attaching. For a separate affiliate to be formed and funded, the operating capital would almost necessarily come from the corporate parent. To disallow this as a source of funding would make it nearly impossible to run a business successfully.

The Commission should not limit such transfers to *de minimis* amounts as suggested in paragraph 115. The fundamental basis for regulating ILECs differently than other companies is that they enjoyed ownership of ubiquitous networks, which arguably created bottlenecks to reaching end users. So long as the functions necessary to provide essential telephone exchange service business remain with the ILEC and are subject to ILEC § 251 obligations, nothing else the ILEC transfers to its affiliate should carry with it ILEC obligations.

State Regulation. In paragraph 116, with respect to intrastate services, the Commission encourages states to treat advanced services affiliates the same as CLECs. CBT agrees that states should allow ILECs to have separate affiliates that would be treated like CLECs. However, in Ohio, an ILEC may be prohibited from creating such an affiliate by state regulations. The Public Utilities Commission of Ohio has adopted local competition guidelines governing the way incumbents are to conduct their business in a competitive environment. See Case No. 95-845-TP-COI, Opinion and Order, dated June 12, 1996. Section II.A.4 of those guidelines states in pertinent part:

> ILECs cannot establish NEC affiliates within their current serving area in order to offer basic local exchange service. A separate ILEC-affiliated NEC may be established to compete in other ILEC serving areas.

Thus, incumbents within the state of Ohio may be prohibited from creating the separate affiliates envisioned by the Commission for the provision of advanced services in their existing territory. It would be inappropriate for CBT to be foreclosed from the opportunity to provide advanced services without ILEC unbundling and resale obligations where state law prohibits the use of a separate subsidiary to do so. The Commission should, instead, devise rules that do not require separate subsidiaries for the provision of advanced services. Otherwise, this would require the Commission to preempt the PUCO's local competition guidelines.

In paragraph 117, the Commission expresses concern that, if advanced services affiliates also provide circuit-switched voice services, ILEC's may allow their existing networks to degrade. CBT does not believe this is a valid concern because a quality network would still be necessary for the affiliate to provide advanced services. Nevertheless, if the Commission truly believes this is concern, CBT would suggest this is a strong reason why separate subsidiaries should not be required in order to avoid ILEC obligations with respect to advanced services. If the ILEC could provide advanced services directly, it would have no reason to form a separate subsidiary and there would be no danger that the ILEC network would be neglected.

III. ADDITIONAL COLLOCATION RULES ARE NOT NECESSARY

In the present proceeding, the Commission addressed collocation as one of the measures to promote competition in the local market. In addressing collocation, the

Commission identified a number of areas in which it either reached tentative conclusions, sought comment or both.

The Commission sought comment in paragraph 123 on whether it should establish additional national rules for collocation in order to remove barriers to entry and speed the deployment of advanced services. The Commission first established rules requiring incumbent LECs, including CBT, to permit collocation for special access and switched transport transmission facilities in the Expanded Interconnection proceeding.[2] The Commission further refined those rules in the Local Competition proceeding,[3] requiring incumbent LECs to provide for the physical collocation of equipment for interconnection and access to UNEs. The rules were established as minimum requirements and the individual states were permitted the flexibility to adopt additional requirements. Many states have exercised this option and have established additional requirements.

Further national rules for collocation are unnecessary, would increase cost to the customer, and would be burdensome for a mid-size independent telephone company like CBT. The burden of additional national rules would require significantly more administrative effort on behalf of CBT and would cause additional costs. Those costs would rightly have to be recovered from the CLECs who seek collocation from CBT and would offset much, if not all, of any benefit to the CLECs seeking collocation. CBT has not experienced any of the collocation difficulties the Commission identifies in this NPRM and resists imposition of further unnecessary rules. If problems occur within a

[2] CC Docket No. 91-141, First Report and Order, adopted September 17, 1992, released October 19, 1992.
[3] CC Docket No. 96-98, Memorandum Opinion and Order, adopted August 1, 1996, released August 8, 1996.

particular state or with a particular incumbent LEC, the State Commissions are equipped to decide complaints or establish additional rules on collocation. The States have been granted the duty of mediating and arbitrating interconnection negotiations between incumbent LECs and new entrants and are better equipped to deal with complaints promptly, while taking into account the actions and the reasonableness of both parties.

Beginning at paragraph 129, the Commission discusses the types of equipment that may be collocated. In the Local Competition Order, the Commission concluded that new entrants may collocate transmission equipment including optical terminating equipment and multiplexers. The Commission also correctly concluded that incumbent LECs need not permit collocation of switching equipment and equipment used to provide enhanced services. CBT sees no changes in equipment design that should change those conclusions. Interconnection of networks between incumbent LECs and new entrant LECs certainly doesn't require the collocation of switching equipment and neither does access to UNEs, one of which is, in fact, local switching. Collocation of switching equipment should not be necessary to provision advanced services either. CBT agrees with the Commission's conclusion that incumbent LECs should permit competing carriers to collocate the same type of equipment that may be collocated by an affiliate. However, CBT does not foresee the need for any affiliate to collocate any equipment that a CLEC could not collocate today.

In response to paragraph 130, the Commission should not change its conclusions in the Local Competition Order that switching equipment may not be collocated. In concert with that conclusion, the Commission must also limit abuses by new entrant LECs who attempt to circumvent the current rules by collocating equipment whose